

1 STATE OF NEW YORK : NASSAU COUNTY

2 SUPREME COURT PART 11

3 - - - - -X

4 THE PEOPLE OF THE STATE OF NEW YORK, SCI/IND. NO.
167N-05

5 -against-

6 MARK ORLANDO, TRIAL

7 Defendant.

8 - - - - -X

9 262 Old Country Road
10 Mineola, New York
11 June 1, 2005

12

B e f o r e :

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HON. DAVID P. SULLIVAN, Supreme Court Judge

14

A p p e a r a n c e s :

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HON. DENIS DILLON
District Attorney, Nassau County
17 By: ROBERT T. HAYDEN, ESQ.
18 Assistant District Attorney

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20

DENNIS LEMKE, ESQ.
Attorney for Defendant
114 Old Country Road
21 Mineola, N.Y. 11501

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Mary Ocskai
Official Court Reporter

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1 THE CLERK: Case on trial, indictment 167N-05,
2 People versus Mark Orlando.

3 Appearances, please, for the People.

4 MR. HAYDEN: Robert T. Hayden for the People,
5 Your Honor.

6 THE CLERK: For the defendant.

7 MR. LEMKE: For Mr. Orlando, Dennis Lemke, 114
8 Old Country Road, Mineola.

9 Defendant's ready, Your Honor.

10 THE CLERK: Let the record reflect the
11 presence of Mr. Orlando.

12 People ready?

13 MR. HAYDEN: Ready, Your Honor.

14 THE CLERK: Prospective jurors are not in the
15 courtroom at this time.

16 THE COURT: Any preliminary matters at this
17 time before we bring in the jury panel?

18 MR. HAYDEN: I would present to the Court as a
19 court exhibit a list of 109 Rosario items given to
20 Mr. Lemke yesterday afternoon. That would be May 31st.

21 MR. LEMKE: Acknowledge receipt, Your Honor.

22 THE COURT: Mark that Court exhibit IV.

23 THE CLERK: Court exhibit IV.

24 THE COURT: For the record, Mr. Lemke, also we
25 have Court exhibit III which is a prospective witness

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1 list by the People.

2 THE COURT: Court's exhibit III is the
3 prospective witness list by the People.

4 Did you get a copy of same, Mr. Lemke?

5 MR. LEMKE: Yes.

6 THE COURT: Thank you.

7 THE CLERK: Ready for the jurors?

8 MR. LEMKE: Yes.

9 MR. HAYDEN: Yes.

10 THE CLERK: Case on trial, 167N-2005, the
11 People of the State of New York versus Mark Orlando.

12 People ready to proceed?

13 MR. HAYDEN: People ready, Your Honor.

14 THE CLERK: Defendant ready?

15 MR. LEMKE: Defendant ready, Your Honor.

16 THE COURT: Good morning, ladies and
17 gentlemen. Probably notice outside the courtroom the
18 name of Judge Calabrese. I am not Judge Calabrese. I
19 am Judge Sullivan. I am borrowing his courtroom for the
20 process of picking a jury.

21 What we're going to do at this point is you all are
22 going to be sworn in by my clerk, Mr. Paoli. Then after
23 that he is going to randomly pick fourteen names out to
24 sit up here in the jury box. I don't want you to be
25 afraid of that. Because your name's picked, you come up

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1 here in this jury box, doesn't necessarily mean you will
2 sit on this trial. Okay. I make a promise to you that
3 all of you will be treated with the utmost respect and
4 consideration by this Court.

5 Mr. Paoli.

6 THE CLERK: Prospective jurors, please rise,
7 raise your right hand.

8 Do you solemnly swear to answer truthfully to all
9 questions asked of you relative to your qualifications
10 to serve as trial jurors in this action so help you
11 God?

12 Please respond I do.

13 (Whereupon, the prospective jury panel collectively
14 answered in the affirmative.)

15 THE CLERK: Have a seat.

16 THE COURT: I am going to fill the box in a
17 minute. Give some preliminary instructions to you so
18 you know what is going on here. Again I welcome you to
19 the Nassau County courts. My name is Judge David
20 Sullivan. You are about to be selected as jurors. I
21 will explain briefly what the trial involves and the
22 roles of the judge and the jury. We also determine
23 which of you will actually sit as jurors in this case.

24 The trial which is about to commence is a criminal
25 action entitled People of the State of New York against

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1 Mark Orlando who is called the defendant. The
2 indictment reads and charges the defendant by this
3 indictment, accusing the defendant, Mark Orlando, of the
4 crime of Murder in the Second Degree, in violation of
5 Section 125.25(1) of the Penal Law of the State of New
6 York committed as follows:

7 The defendant, Mark Orlando, on or about the third
8 day of December, 2004, in the County of Nassau, State of
9 New York, individually and aiding and a abetting and
10 being aided and abetted by Herva Jeannot with intent to
11 cause the death of Robert Calabrese, caused the death of
12 Robert Calabrese.

13 A trial is the process which determines if the
14 defendant is guilty or not guilty of the charge I just
15 read. In that process, those of you who are selected as
16 jurors, and I as judge, perform separate functions. As
17 jurors, you are going to be called upon to determine
18 whether or not the evidence which you hear and see in
19 this case, establishes the defendant's guilt beyond a
20 reasonable doubt. In order to do this, at the end of
21 the trial, you will have to evaluate all the evidence
22 and determine what evidence that you have heard from the
23 witnesses and seen as exhibits is credible and what it
24 all means. This is called finding the facts. That will
25 be your function alone. I will find no facts in this

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1 trial. Your ultimate decision is called a verdict.

2 Your verdict will be either guilty or not guilty.

3 The attorneys will present the evidence usually by
4 calling witnesses, and may suggest in their closing
5 arguments that you draw certain conclusions from the
6 evidence. You're not bound by what the attorneys say.
7 Only you can decide what really happened and the verdict
8 as to the count in the indictment.

9 As judge, I make no determination of guilt or lack
10 of guilt. My role at trial is to ensure that you reach
11 your verdict in accordance with the applicable law as I
12 will explain it to you. In order for the People and the
13 defendant to receive a fair trial, I may have to rule on
14 questions concerning the conduct of the trial. Those
15 rulings have nothing to do with whether the defendant is
16 guilty or not guilty.

17 I may also rule on the questions concerning what
18 evidence you may consider, and for what purpose. When I
19 make a ruling concerning whether you may hear some
20 testimony or see some exhibit which is offered as
21 evidence, I will be ruling on whether or not you're
22 permitted to hear and see it as a matter of law.

23 Likewise, if I instruct you to disregard something
24 you might have heard, I will do so because that is the
25 law. None of my rulings should be taken by you as any

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1 indication at all of whether you should believe or not
2 believe what is offered as evidence, or that the
3 defendant is guilty or not guilty. That is solely for
4 you to determine.

5 You must accept the law as I give it to you if the
6 defendant and the People are to have a fair trial to
7 which they are both entitled. The People are
8 represented by Denis Dillon, District Attorney of Nassau
9 County. Assistant District Attorney Robert Hayden will
10 be trying this case on his behalf.

11 MR. HAYDEN: Good morning, everyone.

12 THE COURT: The defendant is represented by
13 Mr. Dennis Lemke.

14 MR. LEMKE: Hello.

15 THE COURT: The fact that this action is
16 brought in the name of the People, or that evidence is
17 presented by a public official, does not in any way
18 indicate that the public wants a specific verdict. The
19 People of this state are served by whatever verdict is
20 justified by the evidence.

21 You have heard reference to the fact that the
22 defendant was indicted by a Grand Jury. This too is not
23 and must not be taken as any evidence of guilt. An
24 indictment is simply a piece of paper by which a
25 defendant is accused of a crime. Remember, the

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1 defendant is presumed innocent. Only you, as members of
2 the trial jury, will determine whether the defendant is
3 guilty or not guilty.

4 Serving on a jury is a vital function for citizens
5 under our system of law. It is also a very great
6 responsibility. To accord the defendant and the People
7 a fair trial, you must, as a juror, be free from any
8 preconceived notions, sympathies or prejudice that might
9 prevent you from returning a fair and just verdict.
10 Your verdict must be based solely on the evidence or
11 lack of evidence.

12 The first order of business will be to talk to you
13 as prospective jurors. I will ask you some questions.
14 After I finish the attorneys for both parties will ask
15 some questions as well. The purpose of these questions
16 is not to embarrass you or discover any personal details
17 about your lives. It is simply to determine who will
18 ultimately sit as jurors in this case.

19 A number of you will not be selected, but this is
20 not a reflection on you either as a citizen or as a
21 person. This simply is a decision reached during the
22 selection process you're not to sit on this particular
23 case.

24 Now, what will happen now; what I have indicated,
25 when you first came in, so that was sort of the general

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1 rules for you to be aware of. Now Mr. Paoli, my clerk,
2 will randomly pick fourteen names for you to come up
3 here. You hand your forms to the officer and follow
4 their directions.

5 Thank you.

6 THE CLERK: Ladies and gentlemen, as you hear
7 your name called, I'd like you to please approach the
8 podium this way using the swinging gate on the left side
9 of the courtroom. Bring your personal items with you,
10 pocket books, coats, any hand bags you may have.
11 Anything you brought with you, bring that into the jury
12 box. Use the swinging gate on the left side of the
13 courtroom.

14 If you could, have your questionnaires broken down
15 into the four parts before you hit the podium here. It
16 will speed things up a little bit. Okay.

17 The following juror step up.

18 Taylor Stein, S-T-E-I-N.

19 Patricia Bologna, B-O-L-O-G-N-A.

20 Step up.

21 Regina Yuen, Y-U-E-N.

22 Thelma Johnson, J-O-H-N-S-O-N.

23 Aileen Nathan, N-A-T-H-A-N.

24 Sanford Effron, E-F-F-R-O-N.

25 Allison Garballo, G-A-R-B-A-L-L-O.

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1 Marie Hyppolite, H-Y-P-P-O-L-I-T-E.

2 Erica Valentino, V-A-L-E-N-T-I-N-O.

3 Sally Turril Barnes, T-U-R-R-I-L B-A-R-N-E-S

4 Charles Fraser, F-R-A-S-E-R.

5 Bella Saperstein, S-A-P-E-R-S-T-E-I-N.

6 Lorraine Petschauer Poggis, P-E-T-S-C-H-A-U-E-R

7 P-O-G-G-I-S.

8 David Staloff, S-T-A-L-O-F-F.

9 THE COURT: Before we continue can we have
10 counsel at the BENCH, please.

11 (Whereupon, there was a bench conference held off
12 the record.)

13 THE COURT: Again, good morning, ladies and
14 gentlemen.

15 What will happen, my questions will be directed at
16 the people in the jury box, but I just ask everybody to
17 pay attention. Ultimately it could be you in the box.
18 And throughout the course of the day you would have
19 heard all the questions and you would know to let us
20 know before going through the process, if you heard
21 there's a problem.

22 Just so you know, when I indicated we're using
23 Judge Calabrese's courtroom, the victim in this case has
24 no relationship to Judge Calabrese.

25 It has also been brought to our attention,

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1 potential juror number seven, okay, based on what has
2 been brought to the Court's attention, both sides
3 consent to her stepping out.

4 MR. LEMKE: Yes.

5 MR. HAYDEN: Yes.

6 THE CLERK: That is Allison Garballo.

7 THE COURT: Fill the seat.

8 THE CLERK: The following prospective juror
9 please step up with your questionnaire and all your
10 belongings.

11 Cornelius Ket, K-E-T.

12 THE COURT: Ladies and gentlemen, we're going
13 to ask you some questions. If there's anything that
14 touches on some subject that is personal in nature to
15 you, you feel uncomfortable talking, you want to let us
16 know, you can ask to step up here and we will do it
17 privately. Okay. That applies to everybody.

18 Again, I reiterate, we're not here to embarrass
19 you. We appreciate your taking time out of your busy
20 lives to come here and fulfill this obligation.

21 I am going to go through some general questions,
22 and we will see if there's any problems, and basically
23 this process is, I will give you, I will ask some
24 general questions, and give you some basic principles,
25 and if you're okay with what you hear so far, then that

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1 will give the attorneys an opportunity then to further
2 question each of you, and then make determinations on
3 who everybody feels is someone that can sit on this case
4 and be fair and impartial.

5 That is basically the process we're going to go
6 through now. Bear in mind, I know it's headed into the
7 summer. We anticipate this trial would be over two
8 weeks from this Monday. That would be our limit. That
9 is basically the time schedule. So you know. And, we
10 tell you that up front so you could realize that we ask
11 you just to be up front with us and don't try to get out
12 of jury duty, you know, just to get out of it because
13 what happens is, at least here you will know the basics
14 about the case, the time. Whereas if you're discharged
15 from this jury, that doesn't mean you go home. You go
16 back to the jury room and you can be sent out to another
17 case and, you know, it could be longer, whatever. So, I
18 just want you to realize that.

19 And I will start again, I just told you the length
20 of the trial. If there's anyone who has any hearing
21 impediments or medical conditions that would, you know,
22 not enable them to sit on the trial, you will bring that
23 to my attention.

24 If there's any family or business emergencies, as I
25 said, no way trying to cause any hardship to you, your

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1 family, I am not going to try to twist your arm to stay
2 here. I want you to want to be here. And then we will
3 make a decision who can sit on this particular case.

4 Anyone in the last four years, when I, I will ask
5 general questions, you can raise your hands if it's
6 applicable to you, you want to say something to me in
7 response to what I am saying. Okay.

8 Anyone in the last four years sat on jury duty
9 either in the state or federal court?

10 Now I told you we anticipate the trial will be over
11 within two weeks from this upcoming Monday. Anyone have
12 any problem with that, the length of the trial?

13 Yes, sir. If you can just state your name.

14 A PROSPECTIVE JUROR: Sanford Effron.

15 THE COURT: Yes, sir.

16 A PROSPECTIVE JUROR: May I approach the
17 bench?

18 (Whereupon, the following takes place at
19 side-bar.)

20 A PROSPECTIVE JUROR: I was recently unemployed two
21 weeks ago, and I need to get a job. So, I have, I am
22 interviewing. I have set this week aside. I have an
23 interview next Monday and one the following week. This
24 is really --

25 THE COURT: On consent because I don't want

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1 you worried about that.

2 A PROSPECTIVE JUROR: I got to pay the rent.
3 I got to get a job.

4 THE COURT: I hear you.

5 MR. LEMKE: Consent.

6 MR. HAYDEN: Yes, Your Honor.

7 THE COURT: Good luck.

8 (Whereupon, the following takes place in open
9 court.)

10 THE CLERK: Prospective juror Brian Fink,
11 F-I-N-K.

12 THE COURT: Anyone else have a problem with
13 the length?

14 Yes, ma'am.

15 A PROSPECTIVE JUROR: I start an internship
16 program on Monday and I don't know if--

17 THE COURT: You start this Monday?

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: Okay. Consent?

20 MR. HAYDEN: Yes.

21 MR. LEMKE: Yes.

22 THE COURT: That is Miss Stein:

23 A PROSPECTIVE JUROR: Yes..

24 THE COURT: Thank you. You can step down.

25 Someone else in the front row?

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1 Yes, ma'am.

2 A PROSPECTIVE JUROR: Yuen. I work with
3 special ed. students in school. She needs my help. I
4 don't know if I can stay that long.

5 THE COURT: Any objection?

6 MR. LEMKE: No.

7 MR. HAYDEN: No.

8 THE COURT: As I said, bear in mind, that
9 leaving this room sends you back to the commissioner of
10 jurors. You have an idea here of the time frame. That
11 two weeks outer limit. I intend to move this case
12 along.

13 Someone else in the front row?

14 A PROSPECTIVE JUROR: I just started an
15 internship last week. So, I really should be there.

16 MR. HAYDEN: Consent.

17 MR. LEMKE: Consent.

18 THE COURT: That is Mr. Fink. Thank you.
19 Miss Hyppolite.

20 A PROSPECTIVE JUROR: I am a registered
21 nurse. Only nurse working on my shift at night. I
22 don't think I can stay out that long.

23 THE COURT: Okay. Consent.

24 MR. HAYDEN: Yes.

25 MR. LEMKE: Yes.

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1 THE COURT: Thank you.

2 A PROSPECTIVE JUROR: Thank you.

3 THE COURT: Did you have your hand up, ma'am?
4 Two weeks a problem?

5 A PROSPECTIVE JUROR: Yes. I am a student in
6 Nashville, Tennessee. I will be going back on June
7 eleventh.

8 THE COURT: That is a problem. Good luck.
9 Thank you. You're Miss Valentino.

10 A PROSPECTIVE JUROR: Yes.

11 THE COURT: Take care.

12 Ma'am.

13 A PROSPECTIVE JUROR: I was scheduled for a
14 new clearer stress test a week from this Friday. Shall
15 I cancel it?

16 THE COURT: Well, I want you -- do you feel
17 comfortable sitting here?

18 A PROSPECTIVE JUROR: I could do it.

19 THE COURT: Why don't we do this. We will
20 keep going through the process, if it's okay with you,
21 and we will see. You may not be picked for this case
22 anyway.

23 A PROSPECTIVE JUROR: Fine.

24 THE COURT: In that okay with you?

25 A PROSPECTIVE JUROR: Fine.

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1 THE COURT: I put your health and medical
2 stuff first.

3 A PROSPECTIVE JUROR: Fine.

4 THE COURT: Anyone else with the two weeks?
5 Can

6 we fill the box again.

7 THE CLERK: Certainly, Judge.

8 Thank you, ma'am.

9 Seat number one, Dana Damelio, D-A-M-E-L-I-O.

10 THE COURT: Just so you know, I have to get
11 used to this microphone, these are interns in the court
12 system. I want you to know, see them, some of them
13 sitting over here, whatever. Okay.

14 THE CLERK: Charles Lanci, L-A-N-C-I, seat
15 number three.

16 Nicole Girardin, G-I-R-A-R-D-I-N.

17 Glen Andrews, A-N-D-R-E-W-S, seat number
18 eight.

19 Raffat Hyat, H-Y-A-T, seat number nine.

20 THE COURT: Just so it's in your mind and you
21 can plan accordingly, we will not be sitting on this
22 case, if you're chosen, on Monday, June sixth. Just so
23 you know, you have doctor's appointment that day or
24 something.

25 Any of the people that just took their seat have a

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1 problem with the time?

2 Yes, ma'am.

3 A PROSPECTIVE JUROR: I am missing a training
4 course to be here today. So, training course for my
5 job. Make up is fifteenth, sixteenth and seventeenth.

6 THE COURT: You're Miss Damelio.

7 Consent?

8 MR. HAYDEN: Yes.

9 MR. LEMKE: Consent, Your Honor.

10 THE COURT: Good luck.

11 Anyone else with the time? Bear in mind, all
12 this is going to do, if we get through my general
13 questions, is enable the attorneys to come up and ask
14 questions of you. So, if something comes up, or
15 something's on your mind, you're not sure, you will have
16 more opportunity to discuss that. Okay.

17 Mr. Paoli.

18 THE CLERK: Fill the seat?

19 THE COURT: Yes, please.

20 THE CLERK: Arshark Hamsch, H-A-M-S-C-H.

21 THE COURT: Sir, any problem?

22 A PROSPECTIVE JUROR: May I approach the
23 bench?

24 THE COURT: Yes, sir.

25 (Whereupon, the following takes place at

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1 side-bar.)

2 A PROSPECTIVE JUROR: Your Honor, I am
3 planning on a trip June twenty-fourth, to go back to my
4 country after twenty-three years.

5 THE COURT: Don't want you to stress about
6 that.

7 Consent?

8 MR. HAYDEN: Yes.

9 MR. LEMKE: Yes.

10 THE COURT: Have a safe trip.
11 Fill the seat.

12 THE CLERK: Carol Siccarello,
13 S-I-C-C-A-R-E-L-L-O.

14 THE COURT: Apologize if we mispronounce your
15 name. We do the best we can.

16 Ma'am, any problems with what you have heard so
17 far?

18 A PROSPECTIVE JUROR: No.

19 THE COURT: Okay. Thank you.

20 The jury will not be sequestered during
21 deliberations. You will be permitted to return home in
22 the evening. I will instruct you on the rules you will
23 follow at that time.

24 Can everybody hear me without the mike? Okay.

25 Again, please do not seek to avoid jury service

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1 merely because it's inconvenient. Our system of trial
2 by jury is one of the most basic elements of our whole
3 system of justice and it depends upon citizens being
4 willing to sacrifice their time when called upon to
5 serve.

6 My first series of questions will go through about
7 12:30. Then I will break for lunch.

8 My first series of questions will concern your
9 background in order to determine if there's anything
10 which might prevent you from deciding this case solely
11 on the evidence presented. I will start by asking them
12 of all of you. Your answers will not necessarily
13 qualify or disqualify you, but an affirmative yes or
14 even a maybe will probably mean that either I or the
15 attorneys will ask you more questions individually with
16 respect to that. If you wish to answer yes or maybe,
17 please raise your hand as soon as I complete the
18 question. If you do not understand the question, say
19 so, just let me know. If you do not raise your hand, I
20 will assume your answer is no.

21 The defendant, defense attorney and the Assistant
22 District Attorney have already been introduced to you.
23 Do any of you know either the defendant, his lawyer, or
24 the Assistant District Attorney?

25 The following witnesses may be called during the

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1 course of the trial. I am going to cite them for you,
2 and if anybody feels they may know someone on this list,
3 let us know. Okay.

4 Robert Calabrese, Sr.

5 Robert Ianfolla. Both from Long Beach.

6 Tommy Flores from Long Beach.

7 Barbara Diamant, Long Beach.

8 Detective David Nystrom.

9 Police Officer Peter Vozzo.

10 Ambulance Medical Technician Dan Brooks.

11 Dr. Brian O'Reilly.

12 Dr. Michael DeMartino.

13 Frank Walker.

14 Brian Atkinson.

15 Kathleen Cardineau, Island Park.

16 Charles Costello.

17 Police Officer Steve Loschiavo.

18 Detective Jim McGinn.

19 Detective Bill Brosnan.

20 Detective Jim Cereghino.

21 Detective John McHugh.

22 Sergeant Greg Magnifico.

23 Police Officer Norman McCloy.

24 Detective Ken Strigaro.

25 Detective Scott Kovar.

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1 Detective Michael Nigro.

2 Detective Michael Kuhn.

3 Detective Bob Shaw.

4 Detective Jim DiBeneditto.

5 Ken Carter.

6 Vincent Buscemi, Long Beach Police Department.

7 Representative from Cingular Wireless.

8 That is the potential list. Not meaning
9 necessarily that each and every one of them will be
10 called. But there's a potential that they may be.

11 Anybody of the fourteen in the box here recognize
12 anybody on that list? No.

13 Does anyone know anything about this case from what
14 you have heard so far?

15 Do you or anyone close to you such as a family
16 member, relative or friend work for a law enforcement
17 agency such as the police department, the District
18 Attorney's Office, or any federal law enforcement
19 agency?

20 Yes, ma'am. Number one.

21 A PROSPECTIVE JUROR: My husband's a New York
22 City police lieutenant.

23 THE COURT: New York City?

24 A PROSPECTIVE JUROR: Police lieutenant.

25 THE COURT: Okay. You understand there will

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1 be police officers testifying at this trial. Do you
2 realize that you'd have to judge a police officer as any
3 other witness, giving them no greater or lesser
4 credibility because they are a police officer?

5 A PROSPECTIVE JUROR: Yes.

6 THE COURT: Okay. You feel you could be fair
7 and impartial in judging the testimony of the witnesses
8 in this case.

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: Okay. Okay. Thank you.

11 Anyone else in the front row? Number four. Yes,
12 ma'am. Miss Johnson.

13 A PROSPECTIVE JUROR: Yes. My sister works
14 for the Unified Court System.

15 THE COURT: Here in Nassau or where.

16 A PROSPECTIVE JUROR: In --

17 THE COURT: Where.

18 A PROSPECTIVE JUROR: Long Island City.

19 THE COURT: I don't think there will be any
20 court officers testifying here, or I don't know what
21 capacity she works for the Unified Court System.

22 A PROSPECTIVE JUROR: As a stenographer.

23 THE COURT: Do you -- will that have any
24 impact on you being able to be fair and impartial in
25 this case?

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1 A PROSPECTIVE JUROR: No.

2 THE COURT: Okay.

3 THE COURT: Anyone else in the front?

4 In the back row?

5 Your name, please, number nine.

6 A PROSPECTIVE JUROR: Raffat Hyat.

7 My daughter interned District Attorney's
8 Office in Brooklyn and I have worked for customs.

9 THE COURT: Okay. Now, they will be,
10 obviously this case is being prosecuted by an Assistant
11 District Attorney, and they'll be law enforcement
12 personnel testifying at this case. Will the fact that
13 you have these family members in these positions affect
14 you from being fair and impartial, and judging the
15 witnesses as they appear here in court and their
16 credibility?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: No. You think you can be fair and
19 impartial?

20 A PROSPECTIVE JUROR: Yes.

21 THE COURT: Thank you.

22 Anyone one else in the back row have anybody in law
23 enforcement that they know, a family member? Nobody
24 else.

25 Any of you or anyone in your family, been the

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1 victim of a crime, witness to a crime, or in any way
2 participated in a criminal proceeding?

3 Starting with the first row.

4 Yes, ma'am. Number one.

5 A PROSPECTIVE JUROR: While at work last
6 summer my husband was injured on the job. Someone
7 attacked him.

8 THE COURT: Okay. I am sorry.

9 A PROSPECTIVE JUROR: Broke his orbital socket
10 and nose as a result of that.

11 THE COURT: Okay. Will that experience your
12 husband went through affect you from being fair and
13 impartial in this case?

14 A PROSPECTIVE JUROR: No.

15 THE COURT: Nothing to do with that.

16 A PROSPECTIVE JUROR: Not from what I heard so
17 far.

18 THE COURT: The attorneys will question you
19 some more in that regard.

20 Anyone else in the front row?

21 A PROSPECTIVE JUROR: I would like to come to
22 the bench.

23 THE COURT: Yes, please.

24 (Whereupon, the following takes place at side-bar.)

25 THE COURT: This is number two.

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1 A PROSPECTIVE JUROR: I was the victim of a
2 stalking by my husband and my daughter was too, and that
3 happened for a couple of years. It wouldn't have an
4 impact on me in any type of a decision.

5 THE COURT: If the attorneys want to ask you
6 any questions I will have them come up privately. We're
7 not trying to embarrass you. Appreciate your honesty.

8 A PROSPECTIVE JUROR: Okay.

9 THE COURT: Thanks a lot.

10 (Whereupon, the following takes place in open
11 court.)

12 THE COURT: Anyone else in the front row?

13 Yes sir. Mr. Lanci.

14 A PROSPECTIVE JUROR: Yes. My daughter was
15 raped when she was sixteen.

16 THE COURT: I am sorry to hear that. Is that
17 experience going to, that's something totally different
18 than what is happening here.

19 A PROSPECTIVE JUROR: Yes.

20 THE COURT: Do you think you can be fair and
21 impartial?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: I am sure the attorneys will talk
24 to you some more about that and if during the course of
25 that questioning if there's anything you feel you don't

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1 want to discuss publicly let me know and you will come
2 up here.

3 A PROSPECTIVE JUROR: Thank you.

4 THE COURT: Someone else have their hand
5 raised? Yes,

6 ma'am number. Number five, Miss Nathan.

7 A PROSPECTIVE JUROR: My house was broken into
8 several times:

9 THE COURT: Okay. I am sorry to hear that.
10 Will that experience affect you from being able to sit
11 on this case and being fair and impartial?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: Ma'am, you had your hand up.

14 A PROSPECTIVE JUROR: Can I approach?

15 THE COURT: Yes, of course.

16 (Whereupon, the following takes place at side-bar.)

17 THE COURT: Nicole Girardin, number six.

18 A PROSPECTIVE JUROR: It's not a family
19 member. It's my friend. He is actually being tried for
20 attempted murder. His situation, I'm impartial to him,
21 so I don't know if that is --

22 THE COURT: You're saying that because of how
23 your friend is being treated by the criminal justice
24 system you feel you wouldn't be able to be fair and
25 impartial to both sides?

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1 A PROSPECTIVE JUROR: Yes.

2 THE COURT: Consent.

3 MR. HAYDEN: Yes.

4 MR. LEMKE: Yes.

5 THE COURT: Thanks a lot for your honesty.

6 You can step down, ma'am.

7 (Whereupon, the following takes place in open
8 court.)

9 THE CLERK: Yaffa Bertell, B-E-R-T-E-L-L, seat
10 number six.

11 THE COURT: Hello. Anything you heard so far
12 you have a problem with?

13 You want to step up?

14 A PROSPECTIVE JUROR: Yes.

15 (Whereupon, the following takes place at
16 side-bar.)

17 A PROSPECTIVE JUROR: As you can see, my
18 husband was convicted. He was in prison. Whole
19 experience too trying for me to go through.

20 THE COURT: Consent.

21 MR. HAYDEN: Yes.

22 MR. LEMKE: Yes.

23 THE COURT: Thank you, ma'am. Good luck:

24 (Whereupon, the following takes place in open
25 court.)

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1 THE CLERK: Lori Kovacs, K-O-V-A-C-S.

2 THE COURT: Ma'am, anything you heard so far
3 you have a problem with.

4 A PROSPECTIVE JUROR: No problems with
5 anything except the time frame.

6 THE COURT: Okay. What is the problem?

7 A PROSPECTIVE JUROR: Work. I have
8 appointments with the town.

9 THE COURT: You have appointments.

10 A PROSPECTIVE JUROR: Yeah, with the town,
11 help me find a job. I have two appointments.

12 THE COURT: Okay.

13 A PROSPECTIVE JUROR: This week.

14 THE COURT: You have a problem sitting.

15 A PROSPECTIVE JUROR: Yes.

16 THE COURT: Any objection?

17 MR. LEMKE: Consent.

18 MR. HAYDEN: No, Your Honor.

19 THE COURT: Number six, you can step down.

20 THE CLERK: Lewis Quaglia, Q-U-A-G-L-I-A, seat
21 number six.

22 THE COURT: Good afternoon, sir.

23 Any problems with anything you heard so far?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Thank you, sir.

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1 In the back row?

2 If you don't recall the question, if anyone or a
3 family member has been a victim of a crime, an
4 eyewitness, or participated in any type of criminal
5 proceeding. Anyone in the back row.

6 Sir, number seven, Mr. Ket.

7 A PROSPECTIVE JUROR: Yeah, a friend was
8 murdered.

9 THE COURT: A friend.

10 A PROSPECTIVE JUROR: A friend, very close
11 family friend.

12 THE COURT: Sorry to hear that. Obviously you
13 heard the charge in this trial is Murder in the Second
14 degree.

15 A PROSPECTIVE JUROR: I don't think I can sit.

16 THE COURT: On consent.

17 MR. HAYDEN: Yes.

18 MR. LEMKE: Yes.

19 THE COURT: You can step down, sir.

20 THE CLERK: Sharon Reisert, R-E-I-S-E-R-T.

21 THE COURT: So, bear in mind, that my general
22 questions and then some basic principles, going to give
23 you basically for anyone who feels there's some reason
24 they can't sit on this case. Then we get passed that
25 stage just enables the attorneys to ask you more

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1 questions.

2 So, I just ask that if you can stick it out and,
3 you know, at this point you heard the time, the type of
4 case, briefly, briefly, and we talked about if anyone
5 has been a victim of a crime or knows someone who has
6 been involved in the criminal justice system. Going
7 through that now that doesn't mean will disqualify you
8 from this case. Okay.

9 Again, just getting through this stage which I have
10 a few more minutes just brings you to the stage where
11 the attorneys question you. Okay.

12 Sir, did you have your hand up?

13 A PROSPECTIVE JUROR: Yeah, getting back to
14 the previous question. Realized my father-in-law was a
15 cop at one time. I know him as a pet store owner, but
16 way before.

17 THE COURT: Appreciate that. Will that have
18 any effect being fair and impartial in this case?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: Ma'am, yes.

21 A PROSPECTIVE JUROR: I know people on the
22 list.

23 THE COURT: On consent.

24 MR. HAYDEN: Yes.

25 MR. LEMKE: Yes.

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1 THE COURT: You can step down.

2 THE CLERK: Brian Ge, G-E.

3 THE COURT: I had said 12:30. Bear with me a
4 few more minutes.

5 Mr. Ge, any problems so far with anything you
6 heard?

7 A PROSPECTIVE JUROR: Yeah. My grandfather
8 was actually murdered.

9 THE COURT: I am sorry to hear that.

10 A PROSPECTIVE JUROR: Yes.

11 THE COURT: You don't feel comfortable sitting
12 on this type of case?

13 A PROSPECTIVE JUROR: No.

14 THE COURT: Consent.

15 MR. HAYDEN: Yes.

16 MR. LEMKE: Yes.

17 THE CLERK: Ramiro Barrera, B-A-R-R-E-R-A.

18 THE COURT: You have a problem.

19 A PROSPECTIVE JUROR: Yes, the time.

20 THE COURT: The time. Want to tell us
21 privately?

22 A PROSPECTIVE JUROR: Sure.

23 A PROSPECTIVE JUROR: I'm a consultant. My
24 employer only pays for two days jury duty. That is it.

25 THE COURT: You feel you wouldn't be able to

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1 concentrate on what is happening here?

2 A PROSPECTIVE JUROR: Right.

3 THE COURT: Have a problem?

4 MR. LEMKE: No. Consent.

5 MR. HAYDEN: Yes.

6 THE COURT: Thank you, sir. You can step
7 out.

8 THE CLERK: Glen Connors, C-O-N-N-E-R-S.

9 THE COURT: Good afternoon.

10 A PROSPECTIVE JUROR: Good afternoon.

11 THE COURT: Mr. Connors.

12 A PROSPECTIVE JUROR: Yes.

13 THE COURT: Anything you heard thus far you
14 have a problem going further into this process?

15 A PROSPECTIVE JUROR: Just have a question
16 with the time. Just came back from vacation. Yesterday
17 was my first day back. That is my only concern.

18 THE COURT: As I said, we won't sit this
19 Monday, and then I anticipate the outer limit will be
20 two weeks from Monday, and although I have other
21 matters, just so you know, when I have a jury, you're
22 the paramount concern of the court. You're putting your
23 lives on hold. So, I intend to keep this case moving
24 and get it, I hope to get it in within that tie frame
25 and Not even go to that Monday. As we go along, during

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1 the course of the questioning, if you're starting to
2 think about it, let us know.

3 As I said, I am not going to try to hold you here,
4 coerce you to stay. I want this experience to be a good
5 experience for you. And, again, I just note that if you
6 get discharged from here, you go back to the
7 commissioner of jurors, and could end up somewhere else,
8 and I can't speak for them. You know.

9 Anyone else in the back row either been the victim
10 of a crime, have a family member who was a victim of a
11 crime?

12 Yes, ma'am.

13 A PROSPECTIVE JUROR: My husband was held up
14 at gunpoint in his store and our house was burglarized.

15 THE COURT: I am sorry to hear that.

16 A PROSPECTIVE JUROR: Thank you.

17 THE COURT: Will those experiences affect you
18 from -- obviously, this case has nothing to do with
19 that.

20 A PROSPECTIVE JUROR: Altogether different.

21 THE COURT: You feel you can be fair and
22 impartial?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: Sir, did you have your hand up?

25 A PROSPECTIVE JUROR: Yes. My house was

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1 vandalized once.

2 THE COURT: Does that experience affect you
3 from being fair and impartial?

4 A PROSPECTIVE JUROR: No, it shouldn't.

5 THE COURT: Okay. Again, if we get to the
6 next stage, the attorneys will be talking to you more,
7 if you have second thoughts what you told me you just
8 let us know. Okay.

9 Now, in the front row, I will go a few more
10 minutes, front row, anyone ever sat on a criminal or
11 civil jury before or a Grand Jury?

12 Anyone in the front row?

13 A PROSPECTIVE JUROR: About ten years ago.

14 THE COURT: Criminal, civil.

15 A PROSPECTIVE JUROR: I think it was civil.

16 THE COURT: Okay. Understand it's different
17 rules here.

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: You'd have to apply the law as I
20 give it to you. You have a problem with that?

21 A PROSPECTIVE JUROR: No.

22 THE COURT: Anyone else in the front row?
23 In the back row?

24 I will start with you, sir.

25 A PROSPECTIVE JUROR: Charles Frazer.

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1 Medical malpractice case about five years ago here:

2 THE COURT: Okay. That's civil in nature.
3 Understand they'll be different rules here. You have
4 any problem following the rules as I give them to you?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Someone else? Yes, ma'am.

7 A PROSPECTIVE JUROR: It was a criminal case,
8 about ten years ago, I guess.

9 THE COURT: Okay. Understand that this is
10 something totally different. You have to follow the law
11 as I give it to you.

12 That experience wouldn't affect you from being fair
13 and impartial?

14 A PROSPECTIVE JUROR: No.

15 THE COURT: Okay. Thank you. Yes, sir.

16 A PROSPECTIVE JUROR: A civil case.

17 THE COURT: You heard me talking about it.

18 A PROSPECTIVE JUROR: Yes. Totally
19 different. I will follow the law as you give it to me.

20 THE COURT: Thanks a lot. As jurors, your
21 verdict must be unanimous. Twelve jurors seldom agree
22 immediately. You will therefore be called upon to
23 deliberate. Can each of you promise the parties that at
24 the time deliberations commence, you will participate in
25 the deliberations process.

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1 In other words, can you promise the defendant and
2 the People that you are willing to participate in
3 deliberations, express your own individual views based
4 on the evidence in this case, keep an open mind, and
5 listen to the views of the other jurors?

6 Anyone have a problem with that whole concept?

7 No hands.

8 By now you have a general idea about what sort of
9 things might affect your ability to serve as a juror.
10 Of course neither I nor the lawyer can think of
11 everything. You may know something about yourself that
12 others might think would prevent you from being fair and
13 impartial jurors.

14 Do any of you know of any other reason why you
15 can't sit.

16 Again, go through this process, something comes to
17 mind during the process, let us know, and if you want to
18 tell to us privately, let us know. Okay.

19 Now, I am going to break now. Just so you know,
20 when we come back, my second series of questions
21 concerning your willingness to follow my instructions on
22 the law. In order to be a juror, you do not have to
23 know anything about the law. It is my function to
24 explain the law as it applies in this case. It is your
25 function to determine the facts and to apply the law as

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1 I will explain it to those facts.

2 If you are selected as jurors, I will explain the
3 law in detail to you at the end of the case. Then what
4 will happen, you'll come back from the lunch break, I
5 will go over some basic principles of law to make sure
6 no one right off the bat has a problem with that.

7 Okay. When we come back, Mr. Paoli, the Sergeant will
8 instruct everybody, we will resume 2:15. Hope you have
9 a nice lunch.

10 THE COURT OFFICER: Wait outside the courtroom
11 2:15 and the officers will come out and get you. Okay.

12 L U N C H E O N R E C E S S

13 (Afternoon session.)

14 THE COURT: Counsel on the trial, is there
15 anything we need to do outside the presence of the
16 prospective jury?

17 MR. LEMKE: No.

18 MR. HAYDEN: No.

19 THE CLERK: Continued case on trial,
20 167N-2005, the People of the State of New York versus
21 Mark Orlando.

22 People ready?

23 MR. HAYDEN: Ready, Your Honor.

24 THE CLERK: Defendant ready?

25 MR. LEMKE: Defendant ready.

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1 THE COURT: Let the record reflect the
2 presence of Mr. Orlando and the prospective jurors.

3 THE COURT: Good afternoon, everyone. Only 17
4 minute delay, not bad. As we go along I will fine tune
5 that. I apologize for keeping you waiting. I am going
6 to continue with the basic principles to make sure all
7 of you can follow these principles and then at the
8 conclusion of these principles then I will allow the
9 attorneys to ask you questions, starting with Mr.
10 Hayden, the Assistant District Attorney.

11 It is important at this stage for the parties to
12 know that you will follow the law as I give it to you.
13 I will, therefore, describe a few basic principles to
14 make sure that you can follow them.

15 Every person accused of a crime is presumed
16 innocent. That is, he stands innocent in the eyes of
17 the law. The People must rebut this presumption, if
18 they can, by the presentation of evidence which
19 convinces you, beyond a reasonable doubt, of the
20 defendant's guilt.

21 In a criminal case, the burden of proof is on the
22 People, and remains on the People throughout the trial.
23 The defendant is not required to prove or disprove
24 anything.

25 Are there any of you who cannot in your own mind

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1 accord the defendant this presumption of innocence?

2 At the close of the case, I will explain exactly
3 what reasonable doubt means and that you must acquit the
4 defendant if you have a reasonable doubt as to his
5 guilt.

6 Are there any of you who cannot require that guilt
7 be proven beyond a reasonable doubt before you would
8 convict?

9 However, reasonable doubt does not mean beyond all
10 doubt. In other words, the People are not obligated to
11 prove guilt beyond all doubt. Nothing in life is
12 absolutely certain. Is there any of you who would
13 require absolute certainty of guilt before you would
14 convict?

15 Can you assure me that if you find guilt beyond a
16 reasonable doubt you will return a verdict of guilty?

17 Under our system of law, the defendant is not
18 obligated to testify or to call any witnesses or explain
19 his actions in any way. Indeed, the defendant does not
20 have to present any evidence at all, and you cannot draw
21 any inferences unfavorable to the defendant from this
22 fact.

23 Are there of you who will or might allow the fact
24 that if the defendant does not testify, you can't let
25 that influence your deliberations, you are to draw no

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1 unfavorable inferences from that?

2 Anyone have a problem with that?

3 Your deliberations will end when you determine
4 whether or not the defendant has been proven guilty
5 beyond a reasonable doubt. Any sentence which may be
6 imposed is a job for the Court exclusively. You the
7 jury will have no role to play. You're not permitted to
8 consider the possibility of punishment in your
9 deliberations, and you may not include any
10 recommendations as to sentence in your verdict.

11 Is there anyone who feels they cannot render a
12 verdict free from sympathy and without considering the
13 possibility of punishment?

14 It is not essential that you agree with or like the
15 principles of law I will set them forth, as I set them
16 forth. Under my oath, as a judge, I must instruct you
17 on the law as it applies to this case. Under your oath
18 as jurors, you must accept the law as I explain it to
19 you, whether you agree with it or not, and apply it to
20 the facts as you find them.

21 Is there anyone who can't accept this principle?

22 We already discussed this briefly, but I again
23 reiterate it here with respect to police witness. You
24 must judge each witness as an individual and determine
25 whether and to what extent you believe his or her

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1 testimony.

2 Some of the People's witnesses will be police
3 officers. They'll take the same oath as all other
4 witnesses. The fact that a witness is a police officer
5 or wears a police officer's uniform does not make him or
6 her any more or less believable.

7 Do nay of you have any feelings about the police,
8 or anyone have any experience which would lead you to
9 give a police officer's testimony any greater or lesser
10 weight than anyone else's testimony?

11 I am sure the attorneys will talk to you some
12 more. Some of you said you had family members or
13 whatever in law enforcement.

14 You will now be asked various questions by the
15 attorneys starting with the Assistant District Attorney,
16 then the defendant's attorney Mr. Lemke will question
17 you. Their questions like mine are only designed to
18 determine whether you can sit on this particular case.
19 If they inadvertently ask you a question which is
20 embarrassing or very personal you may say so, as we
21 indicated, you have seen already throughout the course
22 of today, we can approach the bench and discuss it in
23 private.

24 At this time, I am going to allow the attorneys to
25 ask you a questions. I thank you for your patience.

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1 Mr. Hayden.

2 (Whereupon, Mr. Hayden questioned the prospective
3 jurors, herein not recorded.)

4 THE COURT: Mr. Lemke.

5 (Whereupon, Mr. Lemke questioned the prospective
6 jurors, herein not recorded.)

7 THE COURT: I would just ask everybody to
8 remain quiet. Be a couple of minutes. Then I am go
9 going to conference up here at the bench, make some
10 decisions with respect to who is going to be able to sit
11 on this particular case.

12 (Whereupon, the following takes place at side-bar.)

13 THE CLERK: First twelve jurors on the board,
14 challenge for cause, People.

15 MR. HAYDEN: None.

16 THE CLERK: Defense.

17 MR. LEMKE: None.

18 THE CLERK: Peremptory challenges, People.

19 THE COURT: First twelve.

20 MR. HAYDEN: Number four, Johnson. For the
21 record, Miss Johnson spends most of her time as a
22 pastor.

23 MR. LEMKE: There is no objection.

24 MR. HAYDEN: Just for the record, she is a
25 pastor, she spends all the time based on what she told

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1 me on religious exercises and I can't take a chance that
2 a woman who I know is going to be sympathetic, who is
3 very religious, may not somehow let her faith interfere
4 with her decision making in this case.

5 Also her religion is Rehobthre, R-E-H-O-B-T-H-R-E,
6 I am not familiar with that religion. I don't know
7 whether members of that religion would be particularly
8 sympathetic and reluctant to pass judgment. So, for
9 those reasons I am going to strike her.

10 THE COURT: Exercising a peremptory, and there
11 is no objection.

12 MR. LEMKE: No.

13 THE COURT: Number four. People peremptory.

14 MR. HAYDEN: That is it.

15 THE COURT: Defense.

16 MR. LEMKE: Exercise peremptory challenges on
17 number one, number three, number seven, Connors, number
18 eight, Andrews, number eleven, Charles Frazer, number
19 twelve, Saperstein. Sicarello, number one. Number
20 three, Lanci.

21 THE CLERK: Number one, Patricia Bologna.
22 Aileen Nathan, number two. Louis Quaglia, number three.
23 Number four will be Raffat Hyat. Number five will be
24 Sally Turrill Barnes.

25 THE CLERK: Six and seven, consideration of

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1 the last two jurors on the board, cause People.

2 MR. HAYDEN: No.

3 THE CLERK: Defense.

4 MR. LEMKE: No.

5 THE CLERK: Peremptory, People.

6 MR. HAYDEN: Number fourteen.

7 MR. LEMKE: Number thirteen.

8 THE COURT: What is the total for both sides,
9 Mr. Paoli?

10 THE CLERK: The People have used two,
11 defendant has use seven.

12 In agreement on that?

13 MR. HAYDEN: Yes.

14 MR. LEMKE: Yes.

15 (Whereupon, the following takes place in open
16 court.)

17 THE COURT: Ladies and gentlemen in the jury
18 box, on behalf of the People and the defendant, Mr.
19 Lemke, the Court, I want to thank all of you. Mr. Paoli
20 will give certain instructions for you to follow. Some
21 of you have been chosen. Just listen to Mr. Paoli.
22 What will happen is the ones who are chosen to sit on
23 this case, I am going to give you certain admonishments
24 regarding the case and ask you to report back here
25 Friday at nine a.m.

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1 Parking gets a little tough here so you might want
2 to come earlier. There's Dunkin Donuts and a deli
3 across the street, get coffee. Talking about the people
4 who are chosen to sit on this case. Okay.

5 Mr. Paoli.

6 Thank you very much everyone.

7 THE CLERK: The following jurors whose names I
8 am about to call, please remain seated. If you hear
9 your name called, remain in your seats. Those jurors
10 whose names are not called, again, you see the court
11 officer over here and he will direct you further.

12 Again you have the thanks of the Court. The
13 following jurors please remain in place.

14 HE CLERK: Patricia Bologna. Aileen Nathan.
15 Louis Quaglia. Raffat Hayat. And Sally Turrill Barnes.

16 Those jurors called remain in your seat. Again the
17 other jurors not called, please see Officer Longo at the
18 back door over there. He will direct you further. You
19 have the thanks of the Court.

20 The selected jurors, kindly rise, raise your right
21 hand.

22 Do each of you solemnly swear you will try this
23 action in a just and impartial manner to the best of
24 your judgment and render a verdict according to the law
25 and evidence so help you God.

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1 (Whereupon, the newly selected jurors collectively
2 answered in the affirmative.)

3 THE CLERK: Have a seat.

4 THE COURT: Folks, like I said, I am going to
5 give you some brief admonishment now and let you go.
6 You don't have to return until Friday at nine o'clock.
7 I believe the sergeant will give you further
8 instructions outside, and as I indicated, I will tell
9 you on Friday, we're not going to sit Monday either in
10 your minds you know tomorrow, Thursday and Monday, you
11 know, you don't have to be here. Okay.

12 You must not converse among yourselves or with
13 anyone else upon any subject connected with the trial.
14 You must not read or listen to any accounts or
15 discussions of the case in the event that it is reported
16 by the newspapers or other media. You must not visit or
17 view the premises or place where the offense or offenses
18 charged were allegedly committed, or any other premise
19 or place involved in the case.

20 Prior to you being discharged, you must not
21 request, accept, agree to accept or discuss with any
22 person the receiving or accepting of any payment or
23 benefit in consideration for supplying any information
24 concerning the trial.

25 You must promptly report to the court any incident

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1 within your knowledge involving an attempt by any person
2 improperly to influence any member of the jury.

3 You shall not access the Internet or Worldwide Web
4 by any means available to you for the purposes of either
5 learning about this case or to learn about the law and
6 legal issues concerning this case.

7 I am not telling you you can't go on the computer,
8 you can't go on the computer specifically to look up
9 this case or any law involving this case. Understand,
10 right?

11 Thank you for your patience. Have a good evening.
12 See you Friday morning. Safe home.

13 THE COURT OFFICER: Selected jurors, step
14 around and follow me, please.

15 THE COURT: Ladies and gentlemen, we're
16 hopeful the process will go quicker now that you heard
17 the questions and you know what goes on.

18 Mr. Paoli, my clerk, will again, randomly, pick out
19 fourteen names to fill the box. Thank you for your
20 patience.

21 Mr. Paoli.

22 THE CLERK: Okay, Judge.

23 Again, the following jurors whose names I am going
24 to call, prospective jurors, please use the swinging
25 gate over here, see the sergeant at the podium here,

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1 have the questionnaire broken down into four parts,
2 bring all your belongings with you, pocketbooks, coats,
3 et cetera.

4 Henry Holler, H-O-L-L-E-R.

5 Barry Silverman, S-I-L-V-E-R-M-A-N.

6 Daniel DeLuca, D-E-L-U-C-A.

7 Charles Eckhardt, E-C-K-H-A-R-D-T.

8 Vincent DeJoseph, D-E-J-O-S-E-P-H.

9 THE COURT: That was someone I personally knew
10 so I released him from this case.

11 THE CLERK: Arlene Sessa, S-E-S-S-A.

12 Jillian Risorto, R-I-S-O-R-T-O.

13 Nadine Schlissel, S-C-H-L-I-S-S-E-L.

14 Gail Zahler, Z-A-H-L-E-R.

15 Cindy Safran, S-A-F-R-A-N.

16 Steven Murer, M-U-R-E-R.

17 Emmalyn Witzman, W-I-T-Z-M-A-N.

18 Kathleen Aldous, A-L-D-O-U-S.

19 Timothy Dand, D-A-N-D.

20 Kristen Fortugno, F-O-R-T-U-G-N-O.

21 THE COURT: Good afternoon, ladies and
22 gentlemen.

23 I am going to briefly talk to you and then let it
24 go into the attorneys hands. Generally, I am going to
25 ask you just a couple of general questions. You

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1 basically have heard the time, you heard the nature of
2 the charge. You heard different things from myself and
3 the attorneys.

4 Would any of your answers to the questions I posed
5 to the first panel be in a manner which would negatively
6 impact upon your ability to be totally fair and
7 impartial?

8 In other words, would any of you not be able to
9 follow the instructions I gave on the law with respect
10 to, for example, to the presumption of innocence,
11 reasonable doubt, sympathy, the fact that the indictment
12 is only an accusation, all the things we discussed so
13 far up to this point?

14 Is there anyone in the front row who feels they
15 can't be fair and impartial?

16 Yes, sir.

17 A PROSPECTIVE JUROR: May I approach, please?

18 THE COURT: Sure.

19 THE COURT: Mr. Silverman.

20 A PROSPECTIVE JUROR: That is me.

21 THE COURT: Step up, sir.

22 (Whereupon, the following takes place at side-bar.)

23 A PROSPECTIVE JUROR: I am a police officer.

24 THE COURT: Consent?

25 MR. LEMKE: On consent.

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1 MR. HAYDEN: Yes.

2 (Whereupon, the following takes place in open
3 court.)

4 THE COURT: Bear in mind, folks, as you know
5 from this morning and this afternoon, all this does is
6 gets you to the next stage where you will be able to
7 talk to the attorneys if you have a problem, whatever.

8 But, again, in the front row, anybody that just
9 can't be fair and impartial based upon what you know at
10 this point.

11 A PROSPECTIVE JUROR: I know one of the names
12 on the list.

13 THE COURT: You know a prospective witness?

14 A PROSPECTIVE JUROR: Right.

15 THE COURT: Consent?

16 MR. HAYDEN: Yes.

17 MR. LEMKE: Yes.

18 THE COURT: That is number four, Mr. Eckhardt.

19 A PROSPECTIVE JUROR: Right.

20 THE COURT: You may step down.

21 THE COURT: Anyone else in the front row?

22 Again, they'll talk to you. So, if something's
23 bothering you, you don't feel you can be fair and
24 impartial, during the course of the questioning let us
25 know.

Proceedings

1 Anything you thus far heard, ladies and gentlemen
2 in the back row, that you'd have a problem being fair
3 and impartial?

4 Yes, ma'am.

5 A PROSPECTIVE JUROR: Can I come up?

6 THE COURT: Would you like to step up? Sure.

7 (Whereupon, the following takes place at
8 side-bar.)

9 A PROSPECTIVE JUROR: I have two reasons, one
10 I am on an advisement board that meets Tuesdays. Second
11 reason, I went through a lot in September. I don't
12 think I can handle this. I don't think I can handle the
13 pictures.

14 THE COURT: On consent.

15 (Whereupon, the following takes place in open
16 court.)

17 THE COURT: Anyone in the back row?

18 Okay. You can fill -- yes, ma'am.

19 A PROSPECTIVE JUROR: Doing the time now.

20 THE COURT: Have a problem.

21 A PROSPECTIVE JUROR: Shavuot falls on the
22 thirteenth and fourteenth.

23 THE COURT: I can't hear.

24 A PROSPECTIVE JUROR: Is a view, Jewish
25 Sabbath.

Proceedings

1 THE COURT: Consent.

2 MR. LEMKE: Yes.

3 MR. HAYDEN: Yes.

4 A PROSPECTIVE JUROR: I have another time
5 issue. My mother is going for major surgery on the
6 sixteenth.

7 THE COURT: I will let you go.

8 On consent eight and nine?

9 MR. LEMKE: Yes, Your Honor.

10 THE COURT: Number twelve, Miss Aldous, you
11 have a problem with the time, with some personal things
12 at home?

13 A PROSPECTIVE JUROR: Yes.

14 THE COURT: Any objection?

15 MR. LEMKE: No.

16 MR. HAYDEN: No.

17 THE COURT: Thank you. You can step down.

18 Follow the officer's instructions.

19 Anybody else? Anything you heard thus far before
20 the attorneys talk to you?

21 Okay. Want to fill these seats.

22 THE CLERK: Certainly. Seat number two,
23 follow the -- prospective jurors, step up, take all your
24 belongings.

25 M. Mendoza, M-E-N-D-O-Z-A, seat number two.

Proceedings

1 Number four, seat number four, Moshen Pahlavan,
2 P-A-H-L-A-V-A-N. Number four.

3 Number 7 Matt Mehele, M-E-H-E-L-E.

4 Seat number eight, Wayne Costello,
5 C-O-S-T-E-L-L-O.

6 Seat number nine, Thomas Scarfo, S-C-A-R-F-O.

7 Number twelve, Paul Bicino, B-I-C-I-N-O.

8 THE COURT: With respect to the six people
9 that just took their seats, in the front row, numbers
10 two and four, any problems with what you heard thus
11 far?

12 Ma'am.

13 A PROSPECTIVE JUROR: Can I?

14 THE COURT: You want to step up? Sure.

15 (Whereupon, the following takes place at
16 side-bar.)

17 A PROSPECTIVE JUROR: I don't know, I --

18 THE COURT: You have trouble sitting on this
19 case. You have a problem sitting on this case.

20 MR. HAYDEN: Consent.

21 MR. LEMKE: Consent.

22 THE COURT: Doesn't worry about it. Consent.
23 Good luck with everything.

24 (Whereupon, the following takes place in open
25 court.)

Proceedings

1 THE COURT: Sir.

2 A PROSPECTIVE JUROR: I know some people on
3 the list.

4 THE COURT: You believe you know some of the
5 prospective witnesses?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: On consent.

8 MR. HAYDEN: Yes.

9 MR. LEMKE: Yes.

10 THE COURT: You can step down.

11 Anyone in the back row seated, any problem with
12 anything you heard thus far?

13 Want to come up?

14 A PROSPECTIVE JUROR: Yes, please.

15 (Whereupon, the following takes place at
16 side-bar.)

17 A PROSPECTIVE JUROR: Work related. Right
18 now, middle of paying for a wedding and buying a house.

19 THE COURT: You will be distracted with those
20 pressures.

21 A PROSPECTIVE JUROR: Yes.

22 MR. LEMKE: Consent?

23 MR. HAYDEN: Yes.

24 THE COURT: Anyone else in the back need to
25 come up here.

Proceedings

1 Bear in mind because you're in the seat that
2 doesn't mean you will be chosen on this case.

3 A PROSPECTIVE JUROR: I have a time issue. I
4 have a flight for a conference.

5 THE COURT: When are you leaving? Going in a
6 couple of days?

7 A PROSPECTIVE JUROR: Friday to Sunday.

8 THE COURT: Supposed to leave Friday. We're
9 going to be sitting Friday. Let the commissioner know
10 to.

11 Consent.

12 MR. HAYDEN: Sure.

13 MR. LEMKE: Yes.

14 THE CLERK: Following prospective jurors step
15 up please.

16 Seat number two, Janice Stanley, S-T-A-N-L-E-Y.

17 Seat number two.

18 Michael Kirkby, K-I-R-K-B-Y, seat number four.

19 John Negrinelli, N-E-G-R-I-N-E-L-L-I.

20 Shirley Abel, A-B-E-L.

21 THE COURT: The four people that just took a
22 seat, any problem at this point?

23 Yes, sir.

24 You don't have, unless it's in private or
25 something, you can tell me from there. If it's private,

Proceedings

1 you can come up. If it's time or going on a trip just
2 tell us from there. All right.

3 I don't think I can keep getting these two
4 attorneys up like this.

5 (Whereupon, the following takes place at
6 side-bar.)

7 A PROSPECTIVE JUROR: I was the victim of two
8 crimes. One I was a witness, and the second -- first
9 one that went to court, second one did go to court and
10 not he, only was victim, I was called as a witness
11 and --

12 THE COURT: Whole experience would affect
13 you?

14 A PROSPECTIVE JUROR: Only because what I saw
15 what happened to the court.

16 THE COURT: Whatever reason.

17 A PROSPECTIVE JUROR: Exactly.

18 A PROSPECTIVE JUROR: What he said before I
19 walk in, I wouldn't want me on there.

20 THE COURT: Consent?

21 MR. LEMKE: Consent.

22 THE COURT: Thank you.

23 MR. HAYDEN: Yes.

24 THE COURT: Anyone else in the back row?
25 Something general?

Proceedings

1 A PROSPECTIVE JUROR: I have an elderly
2 mother. I am, I have, you know, problems with her care
3 for that long period of time.

4 THE COURT: Okay. That is most important
5 thing.

6 On consent?

7 MR. HAYDEN: Yes.

8 MR. LEMKE: Yes.

9 A PROSPECTIVE JUROR: Thank you.

10 THE COURT: This is just going to get us where
11 the attorneys talk to you. Something on your mind don't
12 be afraid to discuss it with them.

13 Mr. Paoli, two seats.

14 THE CLERK: Number seven, William Dunkin,
15 D-U-N-K-I-N.

16 Seat number twelve, Duncin Quarless,
17 Q-U-A-R-L-E-S-S.

18 THE COURT: Gentlemen, anything you heard thus
19 far?

20 Yes, sir, Mr. Dunkin, something we can talk about
21 out in the open?

22 A PROSPECTIVE JUROR: If I can approach.

23 THE COURT: Sure. Come on up.

24 (Whereupon, the following takes place at
25 side-bar.)

Proceedings

1 THE COURT: How are you?

2 A PROSPECTIVE JUROR: Fine.

3 A PROSPECTIVE JUROR: I would like to be
4 excused for medical reasons.

5 THE COURT: Sure. No problem.

6 THE COURT: Got you. Consent.

7 MR. LEMKE: Yes.

8 MR. HAYDEN: Yes.

9 (Whereupon, the following takes place in open
10 court.)

11 THE COURT: Mr. Quarless, any problems?

12 A PROSPECTIVE JUROR: I will try my best to be
13 unbiased but I will tell you that one of my own sons is
14 currently under legal investigation and I think the
15 police --

16 THE COURT: Why don't you step up here.

17 (Whereupon, the following takes place at
18 side-bar.)

19 THE COURT: Excuse me for cutting you off.

20 A PROSPECTIVE JUROR: No charges have been
21 brought but I think the police behaved in an
22 unscrupulous fashion and compromised me as a parent.

23 THE COURT: You don't think you can be fair
24 and impartial?

25 A PROSPECTIVE JUROR: No.

Proceedings

1 THE COURT: Consent.

2 MR. HAYDEN: Yes.

3 MR. LEMKE: Yes.

4 A PROSPECTIVE JUROR: Thank you.

5 THE CLERK: Peggy Stevenson,

6 S-T-E-V-E-N-S-O-N, seat seven.

7 Seat twelve, William Wills, W-I-L-L-S.

8 THE COURT: Ma'am, sir, anything you heard
9 throughout the course of today that would affect your
10 ability to be fair and impartial?

11 A PROSPECTIVE JUROR: No.

12 A PROSPECTIVE JUROR: No.

13 THE COURT: Mr. Hayden, when you're ready. I
14 know you just got the forms. Get the forms in order.
15 Take your time.

16 (Whereupon, Mr. Hayden questioned the prospective
17 jurors, herein not recorded.)

18 (Whereupon, Mr. Lemke questioned the prospective
19 jurors, herein not recorded.)

20 (Whereupon, the following takes place at
21 side-bar.)

22 THE CLERK: Consideration of the first seven
23 on the board for the seven open seats for cause, People.

24 MR. HAYDEN: None.

25 THE CLERK: Defendant.

Proceedings

1 MR. LEMKE: None.

2 THE CLERK: Peremptory, People, first seven
3 only.

4 MR. HAYDEN: One, three, five and six.

5 THE COURT: Put the number on the record.

6 THE CLERK: Peremptory challenges exercised on
7 one, three, five and six by the people.

8 Defendant, peremptory challenges.

9 MR. LEMKE: Two and seven.

10 THE CLERK: Stanley and Stevenson.

11 THE COURT: That makes Michael Kirkby juror
12 number six, correct?

13 MR. HAYDEN: Yes.

14 THE CLERK: Consideration of eight through
15 thirteen for the six open slots. Cause, People.

16 MR. HAYDEN: No.

17 THE DEFENDANT: Defendant, cause.

18 MR. LEMKE: No.

19 THE CLERK: Peremptory, People.

20 MR. HAYDEN: Murer.

21 THE COURT: Number ten and eleven.

22 THE CLERK: Up to thirteen.

23 MR. HAYDEN: And thirteen.

24 THE COURT: For the record ten, eleven and
25 thirteen, peremptory, People.

Proceedings

1 THE CLERK: Murer, Witzman and Dand.

2 THE COURT: Which ones did you use peremptory
3 challenges, Witzman, Dand and Murer?

4 MR. HAYDEN: Yes.

5 THE COURT: Is that correct.

6 MR. HAYDEN: Yes, ten, eleven and thirteen.

7 THE CLERK: Peremptory challenges by the
8 defense.

9 MR. LEMKE: Number eight Costello, and number
10 twelve.

11 THE CLERK: Which leaves one left, Scarfo.

12 THE COURT: Which would be number seven.

13 MR. HAYDEN: Yes.

14 MR. LEMKE: That's correct.

15 THE CLERK: Last one, cause.

16 MR. HAYDEN: No.

17 THE CLERK: Defendant.

18 MR. LEMKE: No.

19 THE CLERK: Peremptory, People.

20 MR. HAYDEN: Yes.

21 THE COURT: We have seven. I will excuse
22 these two until Friday at nine. We should get a jury by
23 then.

24 (Whereupon, the following takes place in open
25 court.)

Proceedings

1 THE COURT: Folks, out of this group two were
2 chosen remaining of the jury. Mr. Paoli will give you
3 instructions in a moment.

4 Thank you on behalf of the court system, on behalf
5 of the parties, the defendant, and the People, and we
6 appreciate your time and your patience. Have a good
7 evening.

8 THE CLERK: Ladies and gentlemen, when you
9 hear your name called, please remain in your seats. You
10 have been selected to sit on this jury. If your name is
11 not called, again, you're excused with the thanks of the
12 Court. See Officer Longo who will direct you further.

13 The following jurors have been selected. Remain in
14 your seat. Michael Kirkby and Thomas Scarfo.

15 THE COURT: Everyone else, again, thank you
16 very much. Have a good night.

17 THE CLERK: Following jurors in the box please
18 stand, raise your right hand.

19 Do you and each of you solemnly swear to try this
20 action in a just and impartial manner to the best of
21 your judgment and render a verdict according to the law
22 and evidence so help you?

23 (Whereupon, the newly selected jurors collectively
24 answered in the affirmative.)

25 THE COURT: Gentlemen, I'm going to admonish

Proceedings

1 you. You can have a seat. You must follow these
2 rules.

3 You must not converse among yourselves or with
4 anyone else upon any subject connected with the trial.
5 You must not read or listen to any accounts or
6 discussions of the case in the event that it is reported
7 by newspapers or other media. You must not visit or
8 view the premises or place where the offense charged was
9 allegedly committed, or any other premise or place
10 involved in the case.

11 Prior to your being discharged, you must not
12 request, accept, agree to accept, or discuss with any
13 person the receiving or accepting of any payment or
14 benefit in consideration for supplying any information
15 concerning the trial.

16 You must promptly report to the Court any incident
17 within your knowledge involving an attempt by any person
18 improperly to influence any member of the jury.

19 You're not to access the Internet or Worldwide Web
20 by any means available to you for the purposes of either
21 learning about this case or to learn about the law and
22 legal issues concerning this case.

23 As I said earlier you can go on the computer, you
24 can't be looking into the law involved here or anything
25 about this case. Okay, gentlemen. You're excused. You

Proceedings

1 will be back Friday at nine a.m. As I said you might
2 want to come earlier. Parking gets tough. Grab coffee
3 or whatever.

4 Have a great day tomorrow. See you on Friday.
5 Thank you very much.

6 THE COURT OFFICER: This way, gentlemen.

7 THE COURT: The case is adjourn to tomorrow.

8 (Whereupon, the trial was adjourned to June 2,
9 2005.)

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